IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.542 OF 2006

M/s.Bermaco Industries Ltd. .. Petitioner
v/s.
Commissioner of Income Tax, Mumbai City X and others. .. Respondents

Mr.Pramodkumar Parida for the petitioner.

Mr.Shiv Motriya for the respondent Nos.1 and 2.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 6TH MARCH, 2006.

P.C.

Heard Mr.Pramodkumar Parida, the learned counsel for the petitioner.

2. The application made by the petitioner for waiver of interest under section 220(2A) of the Income Tax Act, 1961 came to be dismissed by the Commissioner of Income Tax by holding that the assessee did not fulfil the conditions for such waiver.

3. It transpires from the impugned order that for the assessment year 1999-2000 despite filing the return of income amounting to Rs. 22,05,682/-, the assessee did not pay the statutory self-assessment tax. The learned counsel for the petitioner could not dispute this factual position. He submitted that an opportunity ought to have been granted by the

Commissioner of Income Tax before rejecting the application made by the petitioner for waiver of interest. He invited our attention to the communication dated 22nd November, 2005 sent by the petitioner to the concerned Commissioner of Income Tax.

4. From the said communication it appears that the petitioner did not specifically deny the receipt of the notice dated 19.10.2005. What they stated in the communication was that they did not seem to have received letter dated 19.10.2005. If they have not received the notice, it must have been said so in specific terms. We are afraid, the submission of the learned counsel for the petitioner that the petitioner was not afforded the opportunity of being heard, in the circumstances, cannot be accepted. If despite service of notice dated 19.10.2005, the petitioner did not appear before the Commissioner, they did so on their own peril.

5. In any case, another important aspect is that for the assessment year 1999-2000, the assessee filed return of income amounting to Rs.22,05,682/- and despite that it failed to pay the statutory self-assessment tax. In the backdrop of this fact, if the Commissioner of Income Tax declined to accept the petitioner's prayer for waiver of interest under section 220(2A), the order cannot be faulted.

6. The writ petition has no merit and is dismissed in limine.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)